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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1936

No. 552

E. PAT KELLY, as Director of the Department of Labor and Industries of the State of Washington; JAY OLINGER, as Supervisor of the Safety Division of Said Department, and HOWELL PARKER, as Deputy of Said Director under the Title, Marine Inspector,

Petitioners,

v.

STATE OF WASHINGTON on the Relation of FOSS COMPANY, INC., *a Corporation*; ALLMAN-HUBBLE TUGBOAT COMPANY, INC., a Corporation; BELLINGHAM TUG & BARGE CO., INC., *a Corporation*; CAPITAL CITY TUG BOAT CO., INC., a Corporation; CROSBY SAND & GRAVEL COMPANY, INC., a Corporation; JAMES DRAHAM, FOSS LANUCH & TUG CO., INC., a Corporation; O. D. HOUCHAN, JOHNSON TUG & BARGE COMPANY, INC., a Corporation; JOHN W. and ALLEN McEWAN, Doing Business as McEwan Brothers; MERRILL & RING LUMBER CO., INC., a Corporation; NEMAH RIVER TOWBOAT COMPANY, INC., a Corporation; NORTHWESTERN LOGGING COMPANY, a Corporation; JOHN OLSON *and* ED. M. OLSON, Doing Business as Olson Tugboat Company; OLYMPIA TOWING COMPANY, INC., a Corporation; PIONEER TRANSPORT COMPANY, a Corporation; PUGET SOUND TUG & BARGE CO., INC., a Corporation; SCHAFER BROS. LUMBER & SHINGLE COMPANY, a Corporation; SHIVELY TOW BOAT COMPANY, INC., a Corporation; DELTA V. SMITH, SUNSET TUG & BARGE CO., a Corporation; TACOMA TUG & BARGE CO., INC., a Corporation; FRED W. THURBER, TRANSIT TOWBOAT COMPANY, INC., a Corporation; R. J. ULTICAN TUGBOAT CO., INC., a Corporation; WAGNER TUG BOAT COMPANY, a Corporation; CLIFFORD W. WATERMAN, Doing Business as Waterman Towing Co.; KNAPPTON TOWBOAT CO., a Corporation, and SHAVER TRANSPORT CO., a Corporation,

Respondents.

BRIEF OF PETITIONER

I

OPINION OF THE COURT BELOW

The opinion of the Washington supreme court is reported in Volume 186, Washington Reports, at page 589, and is likewise set out in the record accompanying the petition, pages 140 to 146, dissenting opinion, R. 146 to 150.

II

JURISDICTION

CONCISE STATEMENT OF GROUNDS OF JURISDICTION

The cause comes before this court upon an order of this court entered January 18, 1937, granting the petitioners a writ of certiorari based upon the provisions of Section 237, Subdivision B of the Judicial Code (U. S. C. A. Title 28, Section 344).

III

STATEMENT OF THE CASE

Chapter 200 of the Laws of Washington, 1907, contains a comprehensive code for the inspection of steamboats or other vessels operated by machinery engaged in carrying passengers for hire or towing for hire, excepting vessels which are subject to inspection under the Laws of the United States. The act also provides, among other things, for the licensing of officers employed to operate the boats which come under the provisions of the act and vests au-

thority in the department of labor and industries, through its officers, to require adequate personnel to safely operate the said vessels.

The 31 plaintiffs own 172 tugboats which travel mainly upon the inland waters of the State of Washington, including Puget Sound, Grays Harbor and the Columbia River. These boats occasionally sail into Canadian waters and likewise at times travel outside of the inland waters of the State of Washington upon the high seas. (R. 34, 41.) 139 of these vessels are operated by internal combustion engines; the remainder are operated by steam. (R. 34.) The questions presented in this action concern the authority of the State of Washington to enforce, through the department of labor and industries, the provisions of said Chapter 200 of the Laws of Washington, 1907, with reference to these 139 tugboats. The plaintiffs in the superior court for Thurston County asked a writ of prohibition alleging, among other things, that the director of the department of labor and industries, through his subordinates, was about to institute suit for penalties against these plaintiffs and all other tugboat owners who were navigating vessels not subject to inspection by the United States Steamboat Inspectors in or upon any waters lying within the boundaries of the State of Washington, unless they, among other things, (a) submitted their vessels annually or oftener for inspection by duly constituted state officers; (b) made such changes and improve-

ments as might be required by the state department officers; (c) carried such officers on said vessels as the state department had licensed as master pilots and engineers after an examination; (d) carried such crews as required by the director to manage each vessel with safety. (R. 16, 17, 18.)

Plaintiffs further allege that the director was about to prosecute the plaintiffs for failing to comply with all of the remaining provisions of Chapter 200 of the Laws of 1907. Plaintiffs below alleged in their petition for a writ of prohibition that the acts contemplated by the director constituted a violation of Section 8, Article 1 of the United States Constitution (R. 22), and contend also that Chapter 200 of the Laws of 1907 was in direct conflict with the laws of the United States which provided for inspection and boarding of said vessels by officers and inspectors of the Board of Navigation and Steamboat Inspection Service and by all Coast Guard officers (R. 22).

The plaintiffs below further alleged in the petition for writ of prohibition that if your petitioners, defendants below, were not prohibited from enforcing the provisions of said Chapter 200 of the Laws of 1907, they would be deprived of their property without due process of law and would further be deprived of equal protection of the law within the intent and meaning of the Fourteenth Amendment to the Constitution of the United States (R. 22).

Your petitioners, defendants in the trial below, answered the complaint alleging in defense that the acts contemplated to be done by them constitute a valid exercise of authority under the provisions of the law in question (R. 27). At the trial the defendants summoned the officers of the United States Customs Department and Deputy in charge of the Marine Division of the Federal Government for the Puget Sound Area, who testified as to their duties under the Federal statutes (R. 69-105, Incl.). The petitioners here, and defendants below, made and make no claim to inspect or regulate boats of the steamboat category (R. 15, 16, 121, 122, 123). The 139 motor tugboats in question are engaged exclusively in the business of towing (R. 34). The main part of the towing done by these vessels is intrastate but substantially all of them are capable of doing coast-wise service and in some instances do so (R. 41, 42). None of the vessels which we designate herein as motor tugboats are inspected by the United States Inspector of Steamboats for the district or districts within which these boats operate (R. 46, 51, 52, 71, 72, 73, 77, 81, 86, 87, 88, 89, 92, 101). It was conceded by the appellants below, the respondents here, that at the time of trial in the lower court the Federal statutes relating to the inspection of vessels and particularly Sections 362, 364, 391, 392, 404, 405, 511, Title 46 of the U. S. C. A. set out in Appendix "B" in this brief, had been interpreted to vest no authority in the inspec-

tors of steamboats to exercise their authority upon the motor tugs here in question (R. 46, 47, 78) for the purposes of determining the fitness of mechanical equipment, engines, boilers, pressure tanks and all other machinery used in the propulsion of the vessel, and it was likewise conceded that the United States Inspectors of hulls and boilers, who are under the jurisdiction of the United States Department of Commerce, have not authority to inspect the boats in question under the United States Steamboat Inspection Laws (R. 52). Further, that the United States Coast Guard Service made no attempt to inspect the vessels here sought to be inspected and regulated by your petitioners for the purposes of determining the seaworthiness of the hulls of the vessels and the fitness of the mechanical equipment with relation to the safety with which said equipment might be used by the crew (R. 48, 52). (Defendants' Exhibit 5.)

These vessels are subject to no regular inspection service of the Federal government to determine the seaworthiness of the vessel, the fitness of its physical structure and the state of physical repair or disrepair of its propelling machinery (R. 54, 55). Likewise, there is no Federal agency which exercises any supervision or control or licenses the officers or persons in charge of the navigation of these vessels (R. 54, 55, 81, 82, 96). The Coast Guard of the United States government does board these vessels for the purpose of determining whether

they are complying with the general rules relative to navigation which deal with lights, fog horns, whistles, life preservers and fire extinguishers, and they investigate to corroborate the name and the official number of the vessel in question (R. 61, 62). The American Bureau of Shipping under the Load Line Act and the Load Line Treaty of 1930, through the American Inspection Society does inspect motor vessels over 150 tons gross for seaworthiness upon their departure on a foreign voyage outside of the sheltered area (R. 70). Of the vessels herein involved, there are but three motor tugs which exceed 150 tons gross (R. 70). The Federal government through the Customs Service measures these vessels at the time of their construction in order to have the correct measurements for the purposes of classification in connection with registration or enrollment (R. 71).

This investigation has not for its purpose the determination of the seaworthiness of the hull or the safety or fitness of any of the motor tugs in question (R. 72). No Federal law requires motor tugs to carry life boats (R. 72). The Federal law does not require officers on the tug boats to be licensed (R. 78).

It is true the inspector of hulls of the Bureau of Navigation of the Steamboat Inspection Service of the Department of Commerce is required to examine motor tugs, such as the vessels with which

we are concerned in this action, at such time as the vessel may change its name, but this examination is made solely for the determination of the name and tonnage and said examination is not concerned with the seaworthiness of the hull or the fitness of the equipment or of the question of whether or not the boat may be operated with safety (R. 81, 82).

There are many landlocked lakes in the State of Washington upon which steamboats and other vessels ply. The jurisdiction of the State of Washington with reference to these boats is not in question in this proceeding. Some of the provisions of Chapter 200 of the Laws of 1907 refer specifically and exclusively to said landlocked waters which are under the exclusive jurisdiction of the state and are not within the jurisdiction of the United States (See Section 8, Chapter 200, Laws of 1907, Appendix A, at page 48). The state law in question was intended to apply to all vessels operating upon the landlocked waters of the State of Washington and also to such vessels navigating on the waters within the state under the jurisdiction of the United States which are not subject to inspection under the laws of the United States.

The legal dispute in this case revolves around the question of the application of many of the provisions contained in the state law which, if applied in regions subject to Federal jurisdiction, would be in conflict with Federal legislation, such as provi-

sions dealing with rules for navigation, sections dealing with ferry boats, painting of names and the like where the Federal government has made uniform rules applicable to navigation on waters under its jurisdiction. The provisions contained in the sections of the state law, however, can be given full force and effect when applied exclusively to landlocked waters of the state. The legal controversy in this question is whether or not the Federal government has completely occupied the field for regulation with reference to motor tugs by reason of having vested authority in the Coast Guard Service to limited and specified acts which have heretofore been described. Counsel for the respondents here contended in the court below that the Washington law is invalid because the Federal law has already completely occupied the field so as to leave the state no sphere within which its laws may function without coming into conflict with the Federal statutes by virtue of which the powers mentioned were vested in the officers of the Coast Guard Service and the Steamboat Inspection Service of the United States government.

Respondents' counsel contended in argument before both the trial court and the state supreme court that the statute in question constitutes interference with the uniformity of the maritime law and that the provisions of the statute also constitute a burden upon interstate commerce.

There are some 400,000 motor tugs throughout the nation which are subject to the same limited governmental supervision as are the boats to which the provisions of the Washington law have been sought to be applied by the state authorities. In the court below, counsel for the respondent conceded that it was the legislative intention of the State of Washington to apply the statute in question generally to all of the navigable waters within the State of Washington excepting in those places where the statute specifically provided that its provisions would apply only to the landlocked waters of the state.

In the supreme court of the State of Washington in the case below, *State ex rel. Foss vs. Kelly*, 186 Wash. 589, 592, it was said:

"The Federal legislation with respect to vessels and navigation in navigable waters is of vast extent, and seemingly it covers every situation and condition which the Congress has considered to be necessary or advisable to cover. Even row boats are required to carry a lantern showing a white light to be exhibited under certain conditions. (U. S. C. A., Title 33, Sec. 77)."

And further:

"All of the vessels involved in this case, whether registered or enrolled, or enrolled and licensed to engage in the coast-wide trade come under the Federal legislation. Motor boats not more than 65 feet in length are defined and regulated by Chapter 16, Title 46, U. S. C. A. True, that chapter does not

require inspection for seaworthiness or the examination and licensing of officers, but presumably Congress went as far in the regulation of such boats as it thought to be necessary."

The court then substantially found that the provisions in question, by reason of the fees charged for inspection, interfered with the use of the vessels as instrumentalities of interstate commerce.

State ex rel. Foss vs. Kelly, supra, at page 596:

"So here, the license fee is a tax, and the other regulations, speaking generally, are all burdens upon navigation and to some extent upon interstate commerce."

IV

SPECIFICATION OF ERRORS

(1) The Supreme Court of the State of Washington erred in reversing the judgment of the Superior Court of the State of Washington dismissing the petition for a writ of prohibition.

(2) The Supreme Court of the State of Washington erred in holding that Congress had legislated so completely with reference to all vessels plying the navigable waters of the State of Washington so as to have fully occupied the sphere within which legislation pertaining to said vessels could be enacted and in consequence thereof, Chap. 200 of the Laws of 1907 was invalid as applied to navigable waters over which the Federal Government has jurisdiction.

(3) The Supreme Court of the State of Washington erred in holding that the State of Washington did not have general concurrent power to legislate upon matters pertaining to navigation and commerce of intrinsically local concern upon which the Federal government had not legislated, the said state court holding the authority of the United States Government, under Art. 1, Sec. 8 of the Federal Constitution, to be exclusive in all matters relating to navigation and commerce irrespective of whether they were of local or national concern, excepting, in the matter of pilotage which constituted an exception wherein the state could legislate in the absence of Congressional enactments.

(4) The Supreme Court of the State of Washington erred in holding that in matters primarily of local concern, the silence of Congress in relation to matters affecting, in some degree, navigation and commerce was to be construed to be an implication that Congress considered that those matters which had not been made subject to Federal regulation were to be left unlegislated upon and that in consequence thereof, Chap. 200 of the Laws of 1907, the provisions of which were directed to regulation of those matters of local concern which had not been brought within the scope of Federal supervision and control by Congress, was invalid, even though there existed no conflict between the provisions of the state statute and the Federal laws in this field.

(5) The Supreme Court of the State of Washington erred in holding that the provisions of Chap. 200 of the Laws of 1907 constituted an unlawful burden upon interstate commerce.

(6) The Supreme Court of the State of Washington erred in holding that the provisions of Chap. 200 of the Laws of 1907 interfered with the uniformity of Maritime Law.

ARGUMENT

General Statement of Appellants' Contention

It must be remembered that the boats which are regulated by Chapter 200 of the Laws of 1907 of the State of Washington, see Appendix "A", page 45, are boats engaged in towing for hire—that is, the State of Washington does not attempt to regulate these boats as boats, but only as engaged in a particular occupation which is the business of towing for hire.

Many Washington cities are located on the bays and inlets of Puget Sound. The inland waters of Puget Sound include a large body of navigable waters. This is, of course, a natural highway for navigation.

The United States has regulated navigation by rules applicable to vessels of all sorts. It regulates vessels in Puget Sound carrying passengers to such an extent that the state department makes no claim to regulate such boats under Chapter 200. The boats in question are licensed or enrolled under the laws of the United States. Counsel contended for the respondent here, plaintiff below, in the cause below that all of these boats were subject to inspection under the laws of the United States and for this reason were not subject to regulation by Chapter 200 because it excepted such vessels as are sub-

ject to inspection under the laws of the United States.

The Supreme Court of the State of Washington, however, reached the conclusion that the boats were covered by the Washington act, but that inasmuch as the Washington act was held to burden interstate commerce and interfere with the uniformity of the Federal navigation laws, it was void. The question is thus squarely presented — whether or not there is a field for regulation with respect to any of the 139 vessels owned by the respondents which is not occupied by the Federal regulations and, therefore, open to state regulation.

The tug boats here in question largely operate upon the inland waters of the State of Washington. These inland waters are subject to the jurisdiction of the United States, but they are also a part of the territory of the State of Washington for the physical boundaries of the state include the water in question. For purposes of navigation and commerce, the United States has jurisdiction. For other purposes of various kinds the state has jurisdiction. The state has the right, for instance, to regulate and control fishing in these inland waters. It owns tidelands around the shores. It regulates the ports and the harbors. It has the right of taxation. Quarantine and health laws are within its power and we contend it has the power to pass local measures to protect itself against persons or things dangerous to the peace and morals.

The motor tug boats in question frequently engage in operations constituting a part f interstate or foreign commerce. Occasionally they move a raft of logs across an arm of the sound or perform miscellaneous services about the various ports. In all of these services they use the inland waters. There is no question but that the United States has the power to completely regulate traffic over the inland waters considered simply as traffic or navigation. It seems equally well settled that within the ports, the local authorities have direction.

Commerce between the various cities located on Puget Sound is not interstate commerce simply because boats in traveling from one port to another cross navigable waters. See *Wilmington Transportation Co. vs. California Railroad Commission,* 236 U. S. 151. The tug boats making trips between the various ports of the State of Washington are thus within local jurisdiction of the state. That the United States jurisdiction is exclusive when exercised may be conceded. The state may not legislate upon a subject within the maritime jurisdiction, if the United States has occupied the field. Where there is no Federal legislation on a subject, it does not follow that a state may not legislate upon that subject even though it is one within maritime jurisdiction. The United States has not provided for the inspection of vessels less than sixty-five feet in length either as to seaworthiness, safety of machinery or adequacy of crews. For motor tug boats in

excess of sixty-five feet, there are no regulations whatever except that such boats, of course, would be subject to being boarded by the Customs Officials or the Coast Guard and a superficial examination made of lights, fog horns, whistles, life preservers, fire extinguishers and for corroboration of the names and official numbers of the boats. The provisions of the Washington law, it is true, do not specifically refer to motor tugs more or less than sixty-five feet in length, but they are none the less effective as to such vessels. As to these motor tugs then, particularly to ones more than sixty-five feet in length and less than 150 tons burden, the United States motor code does not apply. (Act of June 1, 1910, U. S. C. A. Title 46, Chapter 11, Shipping, 268, Section 1, 3636 Statutes, 462 (Section 511 Appendix).) The respondents herein made a general attack upon the constitutionality of the Washington law and their application for an injunction or a restraining order must fall, if any part of the chapter is enforceable as to any of their boats, because the action is brought not against certain specific acts but to declare the whole law unconstitutional and ineffective. If the respondent has rights, as to certain of its boats, these may be protected in specific instances if and when the director attempts to enforce provisions of the act in conflict with the laws of the United States. (Dissenting Opinion of Judge Blake, 186 Wash. 596, at page 601); *Liverpool, etc. Steamship Company vs. Emigration Com-*

missioners, 113 U. S. 33; *Abrams vs. Van Schaick*, 293 U. S. 188; *Wilshire Oil Company vs. U. S.*, 295 U. S. 100.

The prevailing opinion in the court below is based upon the proposition that inasmuch as the Federal legislation in respect to vessels and navigation in navigable waters, is of vast extent and seemingly covers every situation and condition which Congress has considered to be necessary or advisable to cover, the state is prohibited from passing any regulations whatever concerning the operation of any kind of vessel or boat. We apprehend that the rule is otherwise. In a matter referring to interstate traffic by railways in the case of *Atchison, Topeka, Santa Fe Railway vs. The California Railroad Commission*, 283 U. S. 380, page 391, this court in an opinion by Justice, now Chief Justice, Hughes, says:

"The argument is that as to union terminal facilities, joint use of track and abandonment of lines, the Congress has occupied the field and that all authority has been abrogated. *Northern Pacific Railway vs. Washington*, 222 U. S. 370; *Pennsylvania Public Service Railway vs. Public Service Commission*, 250 U. S. 566; *Colorado vs. United States*, 271 U. S. 153; *Alabama & Vicksberg Railway vs. Jackson*, 271 U. S. 244; *Missouri Pacific vs. Porter*, 273 U. S. 341. The contention presupposes that state authority could be exerted were it not for the provisions of the Federal legislation. That is that it was the intent of Congress to prevent the exercise of state power in this matter of serious public interest, although no authority was given to

the federal commission to meet the public need. Such an intention to override existing state authority to deal with local exigencies is not to be imputed to Congress unless its enactment compels that conclusion * * *."

At page 392:

"The principal thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the state of its authority as to matters not covered by the Federal legislation is not to be implied unless the act of Congress fairly interpreted is in conflict with the law of the State.

Savage vs. Jones, 225 U. S. 501, 533, and other cases."

We call particular attention to the motor code law, Title 46, Sec. 515, Appendix page 60. A careful reading of this section indicates clearly that motor boats more than sixty-five feet in length, although not covered by the remaining sections relating to certain regulations therein, are required to carry life preservers or life belts, etc., to be prescribed and then the balance of the section refers to motor boats as defined in Section 511. The concluding words of the said Section 515 are:

"* * * motor boats shall not be required to carry licensed officers except as required in this chapter."

This provision clearly refers only to boats less than sixty-five feet in length and clearly omits more than thirty of the boats involved in this pro-

ceeding. The language is significant. There is no place in the shipping law that requires motor boats or boats propelled by motors to carry licensed officers and the inference is clearly a prohibition against the state laws as well as national laws that would require that particular sort of a motor boat to carry a licensed officer. It seems significant that Congress should use the particular form of words unless it contemplated that state regulations were to be controlled rather than national legislation upon the particular question, for certainly the section was susceptible of amendment at any time by the Congress and a general law of a later date might quite properly repeal this portion of the section by implication.

GENERAL STATEMENT

Specifications of error Nos. 2 and 4 though constituting two distinct and separate grounds of error by the state supreme court are so closely interwoven that they are treated together under Point "A" in the argument. We propose, therefore, to discuss the argument under the points mentioned in our brief for the writ of certiorari.

POINT "A"

Since the record undisputably reveals that the vessels in question are not subject to inspection by the Federal government for many purposes of substantial importance with relation to the safety of the crew navigating upon the inland waters of the state, the provisions of the state statute which are directed toward regulating matters of local concern must be held valid in the absence of Congressional legislation. It is well established that Congress may subscribe its regulation and occupy the regulated field and the intention to supersede the exercise by the state of its authority as to matters not covered by the Federal legislation is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state. *Gibbons vs. Ogden*, 22 U. S. 1, 6 L. Ed. 23.

POINT "B"

It has been well settled ever since the case of *Cooley v. Board of Port Wardens*, reported in 53

U. S. 298, that the state has concurrent power to regulate generally all matters affecting navigation and commerce in the absence of Federal legislation when the object of the legislation is to govern and control matters of peculiarly local concern.

POINT "C"

The rule is well settled that the collection of inspection fees by a state does not constitute an unlawful tax upon interstate commerce where such fees are collected for inspections relating to matters of local concern affecting navigation and commerce where Congress has remained silent.

POINT "D"

It has been the uniform rule of this court that the state has the power to legislate upon matters of local concern where the health and safety of its citizens are involved. In those instances where the Federal government has not legislated and though interstate commerce and navigation are to some degree affected, the state statute is not invalid solely by reason thereof.

POINT "E"

There is no uniform provision of maritime law relating to harbor traffic and local matters in the several parts of the United States. The regulation of harbor traffic with respect to safety of the traffic in the harbors is a matter which is peculiarly local in character and in no way interferes with the char-

acteristic uniformity of maritime law. The duty of regulating harbor traffic has been delegated to local inspectors in the several districts within the circumscribed limits wherein the Federal government has acted.

POINT "A"

The Federal Government Has Not Completely Occupied the Sphere of Regulation Within Which Chapter 200 of the Laws of 1907 Is Applicable and, Therefore, Said Statute Cannot Be Held to Be Invalid by the Implication of Silence Unless There Is a Direct Conflict Between Its Terms and the Provisions of the Federal Law Applicable to This Field.

Motor boats engaged in the business of towing for hire which are involved in this action largely confine their operations to the inland waters of the State of Washington (R. 41, 42). It is important to the State of Washington upon its inland waters that these vessels be fit for operation; that their propelling machinery be suitable so that they will not break down in the lines of traffic; the hull must be sound and seaworthy; the crew must be sufficient in number so that a sufficient watch will at all times be maintained to prevent collisions. The safety of these vessels, both as to their crew and to the citizens of the State of Washington who travel upon the inland waters, is a matter of immediate and local concern which demands in the interests of the population of the state at large regulation as to these matters with respect to these tug

boats continuously and constantly traversing its inland waters for the protection of the life, health, peace and property of the public at large.

Stewart and Company vs. Rivara, 274 U. S. 614;

Gibbons vs. Ogden, 22 U. S. 1, 6 L. Ed. 23;

County of Mobile vs. Kimball, 102 U. S. 692;

Cooley vs. Board of Wardens, 53 U. S. 298;

Clyde Mallory Lines vs. State of Alabama, 296 U. S. 261;

Old Dominion Steamship Company vs. Gilmore, 207 U. S. 398.

The testimony in this case is that the largest part of the work done by these tugs is confined to purely intra-state business upon the inland waters of the State of Washington. (See testimony of Captain Davis, R. 64):

Q. "What portion of your business is from a point in Washington to a point in Washington?

A. "Well, that varies. Today, 100% of it I think, but it varies with the needs of the business."

The record abounds with admissions on the part of the various tug boat owners called to testify to the effect that diesel tugs are not subject to Federal inspection as to seaworthiness and safety of their propelling equipment (R. 52, 61).

We recognize that the question whether or not inspectors of the Federal government inspect the boats is more largely a question of the Federal law as a matter of statutory construction than it is as a matter of evidence. We have brought out in the

evidence the manner and kind of inspections made by the Federal government to show that in practice the Federal rules concerning navigation do not cover inspection of the boats for seaworthiness or safety of the propelling machinery or the adequacy of the crew to properly operate the boat. In the *License Cases*, 46 U. S. 627, the rule is stated in these words:

"As a general rule, the power of a state over all matters not granted away must be as full in the bays, ports and harbours within her territory, *intra fauces terrae*, as on wharves and shores, or interior soil. And there can be little check on such legislation, beyond the discretion of each state, if we consider the great conservative reserved powers of the states, in their quarantine or health systems, in the regulation of their internal commerce, in their authority over taxation, and, in short, every local measure necessary to protect themselves against persons or things dangerous to their peace and their morals."

Section 2 of Chapter 200, Laws of 1907 Washington, Appendix "A", page 45, herein provides substantially that the Commissioner of Labor shall annually inspect or cause to be inspected every vessel operated by machinery and towing for hire, except vessels which are subject to inspection under the laws of the United States, shall examine carefully her hull, boats and other equipment, shall examine her engine and boilers, ascertain how long it will be safe to use the same. This provision follows closely the provisions of the Federal Act pertaining

to steamboats. 391 U. S. C. A., Title 461, see Appendix "B", page 57.

There is no provision in the Federal statutes for the inspection of these tow boats for seaworthiness or structure of the vessel itself, nor for the mechanical fitness of the propelling machinery (R. 47).

There is no provision in the Federal law which requires licensing of the officers in command of these motor tugs. In fact, the Federal law provides that as to such of them as come within the definition of a motor boat under Chapter 16 of Title 46 of U. S. C. A., that is, those which are less than sixty-five feet long, licensed officers are not required. No provision is made by Federal law as to the number of men which shall comprise the crew which shall insure safe operation of said boats. No Federal agency makes periodic, thorough, comprehensive inspections of these vessels as to the fitness of their structure generally with reference to the safety with which they may be operated. The Coast Guard Service of the Department of Commerce has some limited functions to perform with respect to these motor tugs as well as all other vessels. The Customs Department also has authority to board these vessels but none of them make inspection of these boats, engaged in towing for hire, of the kind and for the purposes provided by the state statute. The inspection intended by Section 2 of Chapter 200, Laws of 1907 of Washington, did

not contemplate the circumscribed and routine police inspection of lights and superficial equipment made by the Coast Guard Service above decks, but contemplated rather a rigid, periodic, thorough going-over from stem to stern and from deck to hold. The statute is expressly limited in its application to vessels not subject to inspection by the Federal law and there is, therefore, no conflict between the Washington State law and the Federal law, express or implied. During the course of the trial, the defendants below, petitioners here, disavowed any intention of regulating those boats with respect to many of the matters complained of and at all times alleged that they claimed no rights except substantially the ones to which reference is made in this brief and in our petition and writ of certiorari.

That the state has the undoubted power to regulate in this field in the absence of Federal legislation has already been referred to, page 24, where the case of *Atchison, Topeka and Santa Fe Railroad Co. v. California Railroad Commission* is cited. The case of *Savage vs. Jones*, therein referred to, 225 U. S. 501, 533, states the following rule:

"But the intent to supersede the exercise by the State of its police power as to matters not covered by Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state."

See also:

Reid vs. Colorado, 187 U. S. 137;
Hennington vs. Georgia, 163 U. S. 299;
Chicago, Milwaukee, St. Paul Ry Co. v. Solan, 169 U. S. 133;
Missouri, Kansas & Texas Railway Co. v. Haber, 169 U. S. 612;
Pennsylvania Ry. Co. v. Hughes, 191 U. S. 477;
Crossman v. Lurman, 192 U. S. 189;
Asbell v. Kansas, 209 U. S. 251.

The determination of the question of conflict between the provisions of the state and Federal statutes in this sphere is a Federal question and in deciding it the Washington supreme court failed to follow the rule of law established by this court in deciding a controversy involving the voiding of a state statute by reason of conflict with Federal regulations. The court below disregarded the principles of law applied in the case of the *Clyde Mallory Lines vs. State of Alabama*, 296 U. S. 261, where, in a decision citing a large number of cases, this court reached the conclusion that state regulations of harbor traffic, although they substantially affect commerce, interstate or foreign, are of local concern so long as they do not interfere with the free flow of commerce and are not made the subject of regulation by Congress. They are not forbidden under Article 1, Section 8, Clause 3 of the United States Constitution.

In the *Wilmington Transportation Company vs. California Railroad Commission*, 236 U. S. 151, Justice, now Chief Justice, Hughes, held that ferriage rates between Avalon Island and Long Beach in the state of California could be established by the state until such time as Congress may intervene by a direct prohibition. Under the authority of this case it would be competent for the state to establish a rate for the towing of logs between Olympia and Everett, for instance. It would seem that if we are entitled to regulate the rates that may be charged for the transportation of products from one port in the state to another, that a very much greater reason would exist for regulating the safety of the vessel with reference to seaworthiness of the hull, its propelling machinery, the maintenance of an adequate crew at all times to safely operate the vessel with reference to other traffic lawfully upon the inland waterways. See also *Gloucester Ferry Co. vs. Pennsylvania*, 14 U. S. 196, 214.

Morgan Steamship Co. vs. Louisiana Board of Health, 118 U. S. 455;

Transportation Company vs. Parkersburg, 107 U. S. 691;

Packet Co. vs. Catlettsburg, 105 U. S. 559;

Pittsburg & Southern Coal Company vs. Louisiana, 156 U. S. 590.

The fee prescribed in section 26 of the disputed act (See Appendix "A", page 54) is obviously not a fee for license, but a fee for inspection. The fee

is paid for a police service in connection with the regulation of the harbor traffic. The propriety of an exaction of this character levied under the authority of a state statute is fully established by the cases which we have cited herein. There is no provision in Chapter 200 of the Laws of Washington, 1907, which provides for the licensing of any of these vessels but they do have to pay a fee for inspection.

POINT "B"

The State Has Concurrent Jurisdiction With the Federal Government to Regulate Navigation and Commerce in Matters Primarily of Local Concern and in the Absence of Federal Legislation the State May Legislate Upon the Subject-Matter.

In the early case of *Gibbons vs. Ogden*, 22 U. S. 1, 6 Law Ed. 23, the power of the state to exercise *controlling supervision of navigable waters and the* vessels plying thereon within its jurisdiction was recognized in matters primarily of local concern. Chief Justice Marshall observed that this power had its origin in its police power, which resides in all sovereignty to regulate in matters concerning the peace, health, safety and morals of its citizens. In the case of *Cooley vs. Board of Port Wardens*, 53 U. S. 298, it was said that this power to legislate on matters of navigation and commerce did not solely originate in the police power, but was inherent in the sovereign. The rule has been consistently sustained by this court.

Wilmington Transportation Company vs. California Railroad Commission, 236 U. S. 151;

Stewart & Co. v. Rivara, 274 U. S. 614;

Minnesota Rate Cases, 230 U. S. 400;

Vandalia Railroad Co. v. Public Cervice Commission of Indiana, 242 U. S. 255;

Steamboat New York v. Rea, 59 U. S. 223;

Morgan v. Louisiana, 118 U. S. 455;

Cornell Steamboat Co. v. Sohmer, 235 U. S. 549.

POINT "C"

A Reasonable Fee Levied by the State Authorities to Defray Cost of Inspection of Vessels in Connection With Regulation of Local Traffic Does Not Constitute an Unlawful Burden Upon Interstate Commerce.

This principle was established in the case of *Cooley vs. Board of Port Wardens of Phila.*, 53 U. S. 298, and has been sustained in many other cases in this court.

In the case of *Clyde Mallory Lines vs. State of Alabama*, 296 U. S. 261, 56 Sup. Ct. Rep. 194, at 195:

"The supreme court of Alabama found that the contested fee was a charge made for the policing of the harbor under the rules adopted by the appellee to insure the safety of vessels and the dispatch of shipping within the port by regulating the speed of vessels, their movements and anchorage and by providing for their protection from danger of fire occasioned by the uncontrolled discharge of oil into the harbor."

At page 197:

"The present fee to defray the cost of a purely local regulation of harbor traffic is not an objectionable burden on commerce. State regulations of harbor traffic although they incidentally affect commerce, interstate or foreign, are of local concern. So long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress they are not forbidden. * * *."

POINT "D"

State Regulations of Harbor Traffic, Although They Incidentally Affect Commerce, Interstate or Foreign, Are of Local Concern and So Long as They Are Not Made the Subject of Regulation by Congress, They Are Not Forbidden as an Unlawful Burden Upon Interstate Commerce.

In the case of *Gloucester Ferry Company vs. Pennsylvania*, 114 U. S. 214, it is said:

"* * * But, independently of such measures, the State may prescribe regulations for the government of vessels whilst in its harbors; it may provide for their anchorage or mooring, so as to prevent confusion and collision; it may designate the wharves at which they shall discharge and receive their passengers and cargoes, and require their removal from the wharves when not thus engaged, so as to make room for other vessels. It may appoint officers to see that the regulations are carried out, and impose penalties for refusing to obey the directions of such officers; and it may impose a tax upon vessels sufficient to meet the expenses attendant upon the execution of the regulations. The authority for establishing regulations of this character is found in the right and duty of the supreme power of the State to provide for the safety, convenient use and undisturbed enjoyment of property within its limits; and charges incurred in

enforcing the regulations may properly be considered as compensation for the facilities thus furnished to the vessels. * * *."

In the case of *Burrows vs. Delta Transportation Company*, a decision of the supreme court of Michigan reported at 64 N. W. 501, 106 Mich. 582, the Delta Transportation Company owned a steamboat which operated upon navigable waters in the State of Michigan. The state law required a fire screen over its smokestack. This boat by reason of its failure to maintain such a screen set fire to the lumber piled along the bank of the river. The owner of the lumber sued the boat operator for damages. It was claimed that the statute requiring the fire screen was void because it constituted an invasion of the exclusive power of the Federal government to regulate matters of navigation and commerce.

The court said on page 594 of the Michigan report:

"* * * The principle has received abundant adjudication that the state may exercise its power to make regulations for the protection of the health, the lives, and the property of the people of the state against the dangers arising under interstate transportation and commerce, concurrent with the laws passed by Congress in the exercise of the jurisdiction of Congress over the same subjects, and that the laws of the state are valid and may be enforced so long as they do not conflict with the provisions of federal legislation. *King v. Transportation Co.*, 1 Flip. 1, Fed. Cas. No. 7,787; *City of New York v. Miln*, 11 Pet. 102, 12 Curt. Dec.

357; *Transportation Co. v. Gagnon*, 36 Fed. 123; *Johnson v. Elevator Co.*, 119 U. S. 388, at pages 399, 400, 7 Sup. Ct. 254; *Transportation Co. v. City of Parkersburg*, 107 U. S. 691, at pages 700-707, 2 Sup. Ct. 732; *County of Mobile v. Kimball*, 102 U. S. 691; *Huse v. Glover*, 119 U. S. 543, 7 Supt. Ct. 313; *Sands v. Improvement Co.*, 123 U. S. 288, 8 Sup. Ct. 113; *Morgan, etc., S. S. Co. v. Board of Health*, 118 U. S. 455, 6 Sup. Ct. 1114; *Sherlock v. Alling*, 93 U. S. 99; *Harrigan v. Lumber Co.*, 129 Mass. 580; *People v. Jenkins*, 1 Hill, 469; *Smith v. Alabama*, 124 U. S. 465, 8 Sup. Ct. 564."

It is interesting to note that the boat involved in the Michigan case was a steamer subject to inspection by the Federal government under the Steamboat Inspection Law, one of a class of vessels over which the State of Washington under Chapter 200, Laws of 1907, makes no claim of jurisdiction. We seek to apply our law only to those vessels which are not inspected by the Federal government.

In the case of *Leisy v. Harden*, 135 U. S. 100, page 117, it is said:

"* * * The controlling and supreme power over commerce with foreign nations and the several states is undoubtedly conferred upon Congress. Yet, in my judgment, the State may, nevertheless, for the safety or convenience of trade, or for the protection of the health of its citizens, make regulations of commerce for its own ports and harbors, and for its own territory; and such regulations are valid unless they come in conflict with a law of Congress.'"

In the case of *Sinnot vs. Davenport*, 63 U. S. 227, the court said:

"We agree that in the application of this principle, the supremacy of an act of the Congress in a case where the state law is but an exercise of the reserve power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together. * * *"

It is true that in the application of the rule in the *Sinnot* case, the court held the statute of Alabama to be void because it conflicted directly with the provisions of Congress relating to enrollment and registration. See also:

Clyde Mallory Lines vs. State of Alabama, 296 U. S. 261;

Sherlock vs. Alling, 93 U. S. 91;

Gilman vs. Philadelphia, 70 U. S. 713;

Atlantic Coast Line vs. Georgia, 234 U. S. 280, 293.

Hennington vs. Georgia, 163 U. S. 299.

The rule of law enunciated in these cases definitely establishes the error of the supreme court of the State of Washington in holding that the provisions of the questioned law constitute a burden upon interstate commerce.

POINT "E"

Chapter 200 of the Laws of Washington of 1907 Does Not Interfere With the Uniformity of Maritime Law.

Congress, by vesting broad authority in the local steamboat inspectors, Section 4438, Rem. Rev.

Stat., title 52, Regulation of Steam Vessels, Appendix "B" of page 62, has itself recognized that the matter of regulating the various vessels in the different harbors of the country constitute a problem which is essentially local in character. These provisions, however, apply only to steam vessels. The Department of Commerce was given power to promulgate rules and regulations providing for the licensing of officers on certain boats, the number of men constituting the crew, the qualifications for engineers, masters and pilots for boats of different tonnages. All these matters are provided for in the rules and regulations of the Board of Supervising Inspectors and authority was delegated to the local inspectors who, under the rules of Section 4463, U. S. Rev. Stat., Title 63, have authority in the premises in each of the several harbors of the United States. These officers exercise broad general supervisory powers with reference to boats other than motor-driven tugs engaged in towing for hire. If such matters are to be regulated by local inspectors as to vessels over which Congress has exercised its powers, the regulations in question of a similar character are subjects of local concern suitable for the exercise of state power upon vessels not covered by the Federal regulations.

Uniformity in the matter of the regulation of harbor traffic is neither possible nor desirable. It is true that the Federal government has legislated with reference to navigation applicable to the mo-

tor tugs in question and has regulated the matter of life preservers and life-saving equipment.

It is also true that the Federal government has not provided for any inspection of hull, for seaworthiness, fitness of mechanical equipment, hours of employment, the number of personnel of the crew, for safety, sanitation of quarters and the inspection of vessels at regular intervals for the purposes aforesaid. In the case of *Savage vs. Jones*, 225 U. S. 501, it is said:

"The most that can be said is that inquiries have been made, but that Congress has not yet decided to establish regulations, either directly or through its subordinate body, as to the appliance in question. The intent to supersede the exercise of the State's police power with respect to this subject cannot be inferred from the restricted action which thus far has been taken."

If we follow this rule it cannot be inferred, because Congress has circumscribed its field and restricts its supervision of these boats to the inspection of life preservers, lights carried by the boat and the provisions requiring the vessels to carry copies of the rules and regulations with respect thereto, properly posted, that it was intended that the field hereinbefore referred to, entirely unoccupied by the Federal government, should not be governed by state legislation.

It is therefore our contention that this statute, properly interpreted, deals with matters substantially and inherently of local concern. That the

Federal government has definitely restricted and limited the field within which it chose to legislate; that the police power of the State of Washington is ample to control the remainder of the field in the absence of contrary provisions by the Congress. The issues involve a Federal question. There is a vast field in which Congress has not legislated. The controlling question clearly is whether or not the state has any power to legislate concerning boats engaged in towing for hire in purely intra-state transactions where the Federal government has provided no regulations of the field which the state has attempted to supervise and regulate.

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APPENDIX "A"

CHAPTER 200.

Regulation of Steam Vessels, Etc.

SEC. 9843. *Commissioner of Labor to Enforce.*—The commissioner of labor shall be charged with the administration of the provisions of this act, shall employ the necessary inspectors to enable him to carry said provisions into effect, and shall exercise supervision over them in the performance of their duties. (Chap. 200, L. '07, p. 425, Sec. 1.)

SEC. 9844. *Inspection of Vessels—Investigation of Accidents.*—The commissioner of labor shall annually, or oftener if he has good cause to believe it reasonable, inspect or cause to be inspected, every steam vessel or other vessel operated by machinery engaged in carrying passengers for hire or towing for hire, *except vessels which are subject to inspection under the laws of the United States,* examine carefully her hull, boats and other equipment, examine her engine and boilers, ascertain how long it will be safe to use the same, determine the pressure of steam to be allowed and so regulate the fusible plugs, safety valves and steam-cocks as to insure safety, and he may require such changes, repairs and improvements to be adopted and used as he may deem expedient for the contemplated route. He shall also fix the number of passengers that may be transported. He shall also, whenever he deems it expedient, visit any vessel licensed under this act and examine into her condition for the purpose of ascertaining whether or not any party thereon having a certificate from him has conformed to and obeyed the conditions of such certificate and the provisions of this act. The owner, master, pilot, captain or engineer of such vessel shall answer all reasonable questions, and shall give all the information in his or their power, in regard to said vessel, her machinery and the manner of managing the same.

In case of damage by fire or explosion or by means of an electrical apparatus, he may investigate the cause thereof, and if found by him to have been occasioned by a violation of any of the provisions of this act, or of the orders, regulations and requirements issued by him, he

shall so certify to the prosecuting attorney of the county where such violation occurred, together with the names of the persons guilty thereof and of the witnesses. (L. '07, p. 425, Sec. 2.)

SEC. 9845: *Boiler Tests—Inspection of Launches.*—The commissioner shall also test the boilers of all steam vessels, before the same shall be used, and at least once in every year thereafter. In subjecting to the hydrostatic test, boilers called and usually known under the designation of high pressure boilers, the hydrostatic pressure applied must be in proportion of one hundred and fifty pounds to the square inch to one hundred pounds to the square inch of the steam pressure allowed. And in subjecting to the hydrostatic test, that class of boilers usually designated and known as low pressure boilers, the commissioner shall allow as the working power of each new boiler, a pressure of only three-fourths the number of pounds to the square inch, to which it shall have been subjected by the hydrostatic test, and found to be sufficient therefor; but should said commissioner be of the opinion that such boiler, by reason of its construction or material will not safely allow so high a working pressure he may, for reasons specifically stated in his certificate, fix the working pressure of such boiler at less than three-fourths of said test pressure; and no boiler or pipe, or any of the connections therewith, shall be approved, which is made in whole or in part, of bad material, or is unsafe in its form, or dangerous from defective workmanship, age, use or other cause. In addition to the hydrostatic test as herein provided, the commissioner may cause a hammer test to be made and an internal examination of such boiler or boilers so tested, whenever deemed necessary. Any boiler having been in use ten years or more may be drilled at the bottom of shell or boiler, and also at such other points as the inspectors may direct to determine the thickness of such material at those points, and the general condition of such boiler or boilers at the time of inspection and the steam pressure allowed shall be determined by such ascertained thickness and general condition of the boiler. He shall also see that all connections to the said boiler or engines are of suitable material, size and construction; and that the boiler, machinery and appurtenances are such as may be employed with safety in the service to be performed.

He shall also satisfy himself that the safety valves are of suitable dimensions and that the weights of the same are properly adjusted, so as to allow no greater pressure than the maximum amount prescribed by him; and that there is a sufficient number of gauge cocks, properly attached to the boiler, so as to indicate the quantity of water therein; and suitable steam gauges to correctly show the amount of steam carried; and as to any other matter connected with such steam vessel or the machinery thereof, that to said commissioner shall seem necessary to safety of her passengers and crew. And he shall make such inspection, examination and test of naphtha launches and electric launches and their apparatus and machinery, as will enable him to determine whether they can be safely used in navigation. (L. '07, p. 426, Sec. 3.)

SEC. 9846. *Certificate of Inspection.*—The commissioner, if satified that such vessel is in all respects safe and conforms to the requirements of this act, shall make and subscribe duplicate certificates, setting forth the age of the vessel, the date of inspection, the name of the vessel, the name of the owner, the master, the number of licensed officers and crew which he deems necessary to manage the vessel with safety, the number of boats and life-preservers required, and the number of passengers that she can safely carry, and if a steam vessel, the age of the boiler, and the pressure of steam she is authorized to carry. One of such certificates shall be kept posted in some conspicuous place on the vessel to be designated by the commissioner in the certificate and the other copy shall be kept by the commissioner and by him recorded in a book to be kept for that purpose. If the commissioner refuses to grant a certificate of approval, he shall make a statement in writing, giving his reasons for such refusal, and deliver the same to the owner or master of the vessel. (L. '07, p. 427, Sec. 4.)

SEC. 9847. *Number of Passengers.*—No greater number of passengers shall be transported upon any licensed steam vessel or other vessel included within the provisions of this act, than the number allowed in the certificate of such vessel, under a penalty of ten dollars, to be paid by the master for each passenger in excess of the allowed number, unless special permission is first

obtained from the commissioner under such precautions as he deems expedient. (L. '07, p. 428, Sec. 5.)

SEC. 9848. *Protection of Woodwork Against Fire.*—All steamboats and other vessels to which this act is applicable, shall hereafter be so constructed that the woodwork about the boilers, chimneys, fireboxes, cookhouses, stove and steam pipes, or any machinery or apparatus involving danger of fire, where such woodwork is exposed to ignition, shall be so shielded by some incombustible material, that the air may circulate freely between such material and woodwork or other ignitible substances, and before granting a certificate of inspection, the commissioner shall require that all other necessary provisions be made throughout such vessel, as he may judge expedient to guard against loss or damage by fire. (L. '07, p. 428, Sec. 6.)

SEC. 9849. *Stairways and Gangways.*—Every vessel engaged in carrying passengers, shall be provided with permanent stairways and other sufficient means convenient for passing from one deck to the other, with gangways large enough to allow persons freely to pass, which shall be open fore and aft of the length of the vessel, and to and along the guards; and whoever obstructs such gangways by freight or otherwise shall forfeit fifty dollars to the state of Washington for every such violation. (L. '07, p. 428, Sec. 7.)

SEC. 9850. *Rules for Navigation of Vessels.*—From and after the passage of this act, the following rules shall be observed in navigating all steam vessels when under steam, and all boats propelled by machinery on *the waters within the jurisdiction of the state, excepting the waters which are under the jurisdiction of the United States:* * * * (L. '07, p. 429, Sec. 8.)

In view of the restrictive language used in the first paragraph of this section, the eighteen subdivisions have been omitted in the interests of brevity.

SEC. 9851. *Lights.*—The master of every steamboat or vessel propelled by machinery when navigating between sunset and sunrise, shall cause the same to carry the following lights:

(1) At the foremast head, a bright light of such a character as to be visible on a dark night, with a clear

atmosphere at a distance of at least two miles; and be so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and to be fixed so as to throw the light ten points on each side of the vessel from right ahead to two points abaft the beam on either side.

(2) On the starboard side a green light of such a character as to be visible on a dark night, with a clear atmosphere at a distance of at least two miles; and be so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

(3) On the port side a red light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The green and red lights shall be fitted with inboard screens, projecting at least three feet forward from the lights, so far as to prevent them from being seen across the bow.

(4) The master of every vessel other than a steamboat anchored in the night-time shall cause her peak to be lowered and a good and sufficient light to be thrown from her taffrail in some part of her rigging and at least twenty feet above her deck. In the case of small vessels, the commissioner may make specific rules for lights different from the foregoing. (L. '07, p. 431, Sec. 9.)

* * * * * * *

SEC. 9854. *Life-Preservers—Buckets and Axes.*—Every steam vessel or vessel propelled by machinery used in the transportation of passengers for hire, shall have a life-preserver or life-float for each passenger she is allowed to carry and for each member of her crew. At least one-half thereof shall be life-preservers of the sort prescribed by the supervising inspector appointed under this act, and the other half or part thereof may be life-floats, to be constructed of dry pine plank, four feet long, two inches thick and twelve inches wide, with lines properly attached in such manner as to be convenient for use; and it shall be the duty of the commissioner to satisfac-

torily ascertain that every life-preserver and such life-floats are as herein required. Such life-preservers and life-floats shall be kept in convenient accessible places in such vessel in readiness for immediate use in case of accident, and the places where the same are to be kept shall be designated in the commissioner's certificate, and also pointed out by printed notices posted in such places as the commissioner directs. Every such vessel shall carry in convenient places, at least ten buckets filled with water, with dip lines attached, and three axes in good condition, but the inspectors may, if they deem it necessary or proper, require a larger, or in case of very small vessels, permit a smaller number of buckets and axes. (L. '07, p. 433, Sec. 12.)

SEC. 9855. *Obstruction of Safety Valves, etc., Prohibited—Penalty.*—Whoever intentionally loads or obstructs, or causes to be loaded or obstructed, in any way, the safety valve of the boiler, or employs any other means or device whereby the boiler may be subjected to a greater pressure than the amount allowed by the commissioner's certificate, or intentionally deranges or hinders the operation of any machinery or device employed to denote the state of the water or steam in any boiler, or to give warning of any approaching danger, or intentionally permits the water to fall below the prescribed low water limit of the boiler, shall forfeit to the state of Washington the sum of five hundred dollars for each violation. (L. '07, p. 434, Sec. 13.)

SEC. 9856. *Examination for License as Master, Pilot and Engineer.*—Every person employed as master, pilot or engineer on board of a steam vessel or a vessel propelled by machinery, carrying passengers for hire or towing for hire, shall be examined by the commissioner as to his qualifications, and if satisfied therewith he shall grant him a license for a term of one year for such boat, boats or class of boats as said commissioner may specify in such license. In a proper case, the license may permit and specify that the master may act as pilot, and in case of small vessels also as engineer and pilot. The license shall be framed under glass, and posted in some conspicuous place on the vessel on which he may act. Whoever acts as master, pilot or engineer, without having first received such license, or upon a boat or class of

boats not specified in his license, shall be liable to a penalty of fifty dollars for each day that he so acts, except as in this act otherwise specified, and such license may be revoked by the commissioner for intemperance, incompetency or wilful violation of duty. (L. '07, p. 434, Sec. 14.)

SEC. 9857. *Standard Quality of Oil, to Be Used in Lights.*—No licensed vessel carrying passengers for hire shall be allowed to use in lamps, lantern or other lights on such vessels, any oil which will not stand a fire test of at least three hundred degrees Fahrenheit. (L. '07, p. 434, Sec. 15.)

SEC. 9858. *Name and Home Port on Stern.*—Every vessel subject to the provisions of this act, shall have her name and port to which she belongs painted on her stern on a black background in white, yellow or gilt letters, or on a white background in black, yellow or gilt letters of not less than three inches in length. If any vessel, which is subject to the provisions of this act, shall be found without having her name, and the name of the port to which she belongs so painted, the owner or owners shall be liable to a penalty of fifty dollars to the state of Washington. The commissioner may, however, in the case of small vessels, permit such name to be placed elsewhere and in letters of less length, the permission, the place of the name and length of letters to be stated in a certificate to be given to the master, who shall exhibit the same whenever requested. (L. '07, p. 435, Sec. 16.)

SEC. 9859. *Landing Passengers in Small Boats.*—Small boats containing passengers may be landed from or drawn to a steamboat by means of a line hauled in by hand, but in no case shall the line be attached to or hauled in by the machinery of any vessel. No passenger shall be put or suffered to go into any such small boat for the purpose of being landed until such small boats shall be completely afloat and wholly disengaged from the vessel, except held by a painter. A good and sufficient pair of oars suitable for the purpose shall be kept in such small boat. In landing or receiving any passenger in the nighttime, there shall be a signal from the small boat at the shore by means of a horn or trumpet, to enable those having charge on board the vessel to determine when the

small boat, having landed or received her passengers, is ready to leave the shore. (L. '07, p. 435, Sec. 17.)

SEC. 9860. *Same—Engines to be Stopped.*—While landing or receiving passengers the engine of the vessel shall not be put in motion except:

(1) To give sufficient force to carry the small boat to the shore, or,

(2) To keep the vessel in proper direction and to prevent her from drifting or being driven on shore; but in no case shall it be put in motion while passengers are being transferred from such vessel into a small boat for the purpose of being landed. (L. '07, p. 435, Sec. 18.)

SEC. 9861. *Regulation as to Carrying Combustibles.*—No loose hay, loose cotton or loose hemp, camphene, nitro-glycerine, naphtha, benzine, benzole, coal oil, crude petroleum or other like explosive burning fluids or dangerous articles, shall be carried as freight or used in stoves on any steamer or vessel licensed to carry passengers under this act; * * * (L. '07, p. 436, Sec. 20.)

SEC. 9863. *Penalty.*—Every master of a steamboat or vessel who shall violate any of the preceding sections of this act shall, for every such violation, forfeit to the state of Washington the sum of two hundred and fifty dollars, unless a different penalty is prescribed. (L. '07, p. 436, Sec. 21.)

SEC. 9864. *Liability of Owner of Vessel for Misconduct of Master.*—The owner of every steamboat or vessel shall be responsible for the good conduct of the master employed by him, and if any penalty incurred by such master is not paid by him and cannot be collected from him by due course of law, it may be recovered of the owner or owners, jointly or severally, of the steamboat or vessel in whose employ he was at the time of the incurring of such penalty, in the same manner as if such owner or owners were sureties of such master. (L. '07, p. 436, Sec. 22.)

SEC. 9865. *Copy of Act Shall be Posted.*—The master of every vessel shall keep a copy of the preceding sections of this act posted in a conspicuous place on such vessel for the inspection of all persons on board thereof. Every master violating the provisions of this section shall

forfeit to the state of Washington, twenty-five dollars, and the additional sum of twenty-five dollars for each month such violation continues. (L. '07, p. 437, Sec. 23.)

SEC. 9866. *Commissioner's Report to Governor.*—The commissioner shall on or before the 1st day of January in each year, make a verified report to the governor containing a detailed statement of the names and number of vessels examined and licensed, the names and number of vessels to which licenses were refused and stating the reasons for the refusal, the names and number of persons examined and licensed, the names and number to whom licenses were refused and stating the reasons therefor, and may include in such report any other information he may deem desirable. (L. '07, p. 437, Sec. 24.)

SEC. 9867. *Penalty for Noncompliance With Act—Renewal of Certificate, etc.—Requirements of Launches Navigating the Straits.*—All steam vessels, naphtha, gasoline and electric launches, or any craft propelled by machinery, carrying passengers for hire, or towing for hire must comply with all the terms and provisions of this act, and with all orders, regulations and requirements of the commissioner except that any such vessel not propelled by steam, or when not under steam, is exempt from the provisions in regard to the blowing of whistles. If any such vessel is navigated without complying therewith, except as herein stated, or without the requisite certificates of the commissioner, the owners and masters shall forfeit to the state of Washington the penalties prescribed in this act, and the vessel so navigated shall also be liable therefor, and may be attached and proceeded against in any court having jurisdiction. But if any such vessel is deprived of the services of any licensed officer, without the consent, fault or collusion of the master, owner or any person interested in the vessel, the deficiency may be temporarily supplied, until a licensed officer can be obtained. If the owner or master of any vessel shall at least twenty days before the expiration of his certificate notify the commissioner of such expiration and request a new inspection and certificate, the certificate then expiring shall continue in force until an inspection is made and such owners and masters are not liable for any of the penalties provided in this act on account of navigating said vessel, without such new cer-

tificate. No launch under ten tons carrying passengers shall navigate the waters of the straits of Juan de Fuca, unless provided with a boat of sufficient size to accommodate said passengers and be under the management of a person holding a United States license for steam vessels. (L. '07, p. 437, Sec. 25.)

SEC. 9868. *Fees.*—For each inspection provided for in sections 9844 and 9845 the owner or master of each vessel shall pay the commissioner of labor an inspection fee, which shall not be less than five dollars, nor more than twenty dollars, to be fixed by the commissioner of labor with reference to the size of the vessel inspected. For each license issued under section 9860 of this act the person so licensed shall pay to the commissioner of labor the sum of five dollars. All of the fees received from this source shall be accounted for by the commissioner of labor to the state treasurer, and credited to the general fund. (L. '07, p. 438, Sec. 26.)

SEC. 9869. *Compensation of Inspectors.*—The inspectors provided for in this act shall receive seven dollars per diem for the time actually engaged in making the inspections and examinations provided for herein, and shall be paid necessary traveling expenses, when making such inspections and conducting such examinations at other than the domicile of said inspectors. (L. '07, p. 438, Sec. 27.)

SEC. 9870. *Authority of Inspectors.*—Any inspector duly employed by the commissioner of labor for the execution of any of the provisions of this act, shall be deemed to be a deputy of said commissioner for the purposes hereof, and may perform any act and exercise any authority herein prescribed for the commissioner of labor. (L. '07, p. 438, Sec. 28.)

APPENDIX "B"

TITLE 46—SHIPPING.

U. S. C. A. CHAPTER 14.

Vessels Subject to Inspection and Regulation

SEC. 362. *Vessels Subject to Provisions of Chapter; Reciprocal Acceptance of Foreign Certificates of Inspection; Fees.*—All steam vessels navigating any waters of the United States which are common highways of commerce or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of this and the following chapter and sections 214 and 215.

And all foreign private steam vessels carrying passengers from any port of the United States to any other place or country shall be subject to the provisions of sections 391, 392, 399 to 402, inclusive, 463 to 466 inclusive, 472, 475, 481, 494, 495, 497, and 498, and shall be liable to visitation and inspection by the proper officer, in any of the ports of the United States, respecting any of the provisions of the sections aforesaid: *Provided, however*, That when such foreign passenger steamers belong to countries having inspection laws approximating those of the United States, and having unexpired certificates of inspection issued by the proper authorities in the respective countries to which they belong, they shall be subject to no other inspection than necessary to satisfy the local inspectors that the condition of the vessel, her boilers, and life-saving equipments are as stated in the current certificate of inspection; but no such certificate of inspection shall be accepted as evidence of lawful inspection except when presented by steam vessels of other countries which have by their laws accorded to the steam vessels of the United States visiting such countries the same privilege accorded to the steam vessels of such countries visiting the United States; it being further provided that there shall be collected and paid into the Treasury of the United States the same fees for the inspection of foreign passenger steamers carrying passengers from the United States that any foreign nation shall

charge the merchant vessels of the United States trading to the ports of such nationality; it being further provided that the Secretary of Commerce shall have the power to waive at any time the collection of such fees upon due notice of the proper authorities of any country concerned that the collection of fees for the inspection of American steam merchant vessels has been discontinued.

It is further provided that the Secretary of Commerce may, in his discretion, permit any foreign passenger steamer coming within the provisions of this section whose foreign certificate of inspection shall have expired at sea since last leaving the country to which said vessel belongs, or while said vessel shall have been in a port of the United States, to sail upon her regular route without undergoing any further inspection than would have been required had said foreign certificate of inspection been in force: *Provided, however,* That such discretion shall be exercised only with respect of vessels operated upon regularly established lines, and in cases where such foreign passenger steamers will be regularly inspected by the authorities of her home government before her next return to a port of the United States. (R. S. Sec. 4400; Aug. 7, 1882, c. 441, Sec. 1, 22 Stat. 346; Mar. 1, 1895, c. 146, Sec. 1, 28 Stat. 699; Feb. 15, 1902, c. 23, 32 Stat. 34; Mar. 17, 1906, c. 955, Sec. 1, 34 Stat. 68; Mar. 4, 1913, c. 141, Sec. 1, 37 Stat. 736.)

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TITLE 46—SHIPPING.

SEC. 364. *Vessels Navigating Coastwise and on Great Lakes.*—All coastwise seagoing vessels, and vessels navigating the Great Lakes, shall be subject to the navigation laws of the United States, when navigating within the jurisdiction thereof; and all vessels, propelled in whole or in part by steam, and navigating as aforesaid, shall be subject to all the rules and regulations established in pursuance of law for the government of steam vessels in passing, as provided by this and the following chapter; and every coastwise seagoing steam vessel subject to the navigation laws of the United States, and to the rules

and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats. (R. S. Sec. 4401.)

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Mode, Manner, and Extent of Inspection: Certificates: Records.

SEC. 391. *Hulls and Equipments; Exemption of Vessels; Enforcement of Requirements.*—The local inspectors shall, once in every year, at least, carefully inspect the hull of each steam vessel within their respective districts, and shall satisfy themselves that every vessel so submitted to their inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for passengers and the crew, and is in a condition to warrant the belief that she may be used in navigation as a steamer, with safety to life, and that all the requirements of law in regard to fires, boats, pumps, hose, life preservers, floats, anchors, cables, and other things are faithfully complied with; and if they deem it expedient they may direct the vessel to put in motion, and may adopt any other suitable means to test her sufficiency and that of her equipment. The local inspectors shall, once in every year, at least, carefully inspect the hull of each sail vessel of over seven hundred tons carrying passengers for hire and all other vessels and barges of over one hundred tons burden carrying passengers for hire within their respective districts, and shall satisfy themselves that every such vessel so submitted to their inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, and is in condition to warrant the belief that she may be used in navigation with safety to life: *Provided,* That vessels while laid up and dismantled and out of commission may, by regulations established by the board of supervising inspectors, with the approval of the Secretary of Commerce, be exempted from any or all inspection under this section and sections 392, 404, and 405. Whenever any inspector or assistant inspector shall, in the performance of his duty, find on board any vessel subject to the provisions of this and the following chapter, as part of the required equipment

thereof, any equipment, machinery, apparatus, or appliances not conforming to the requirements of law, he shall require the same to be placed in proper condition by the owner or master of the said vessel, if possible; and if said inspector or assistant inspector shall find on board any such vessel any life preservers or fire hose so defective as to be incapable of repair, he shall require that the same be destroyed in his presence by such owner or master. And in any of the foregoing cases local inspectors by whom or under whose supervision said vessel is then being inspected shall have power to enforce the foregoing requirements by revoking the certificate of the said vessel, and by refusing to issue a new certificate to the said vessel until the said requirements shall have been fully complied with or until such action of the local inspectors shall have been reversed, modified, or set aside by the supervising inspector of the district on proper appeal by the owner or master of said vessel, which appeal shall be made to the said supervising inspector within ten days after the final action as aforesaid by the local inspectors; and upon such appeal, duly made, the supervising inspector shall have power to affirm, modify, or set aside such action by the local inspectors. (R. S. Sec. 4417; Dec. 21, 1898, c. 29, Sec. 4, 30 Stat. 765; Mar. 3, 1905, c. 1454, Sec. 1, 33 Stat. 1023; Mar. 4, 1913, Sec. 1, c. 141, 37 Stat. 736.)

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SEC. 392. *Boilers and Appurtenances.*—The local inspectors shall also inspect the boilers and their appurtenances in all steam vessels before the same shall be used, and once at least in every year thereafter, and shall subject all boilers to the hydrostatic pressure. All such vessels shall comply with the following requirements, namely: That the boilers are well made, of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of proper dimensions and free from obstructions; that the spaces between and around the flues are sufficient; that flues, boilers, furnaces, safety valves, fusible plugs, low-water indicators, feed-water apparatus, gauge cocks, steam gauges, water and steam pipes connecting boilers, means of prevention of sparks and flames from fire doors, low-water gauges, means of removing mud and sediment from boilers, and all other

such machinery and appurtenances thereof, are of such construction, shape, condition, arrangement, and material that the same may be safely employed in the service proposed without peril to life; and the local inspectors shall satisfy themselves by thorough examination that said requirements of law and regulations in regard thereto have been fully complied with. All boilers used on steam vessels and constructed of iron or steel plates, inspected under the provisions of section 408, shall be subjected to a hydrostatic test, in the ratio of one hundred and fifty pounds to the square inch to one hudred pounds to the square inch of the working steam power allowed. No boiler or flue pipe, nor any of the connections therewith, shall be approved, which is made, in whole or in part, of bad material, or is unsafe in its form, or dangerous from defective workmanship, age, use, or other cause. (R. S. Sec. 4418; June 19, 1886, c. 421, Sec. 14, 24 Stat. 82; Mar. 3, 1905, c. 1456, Sec. 1, 33 Stat. 1027.)

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SEC. 404. *Inspection of Ferryboats, Canal Boats, and Small Craft; Regulations; Licenses.*—The hull and boilers of every ferryboat, canal boat, yacht, or other small craft of like character, propelled by steam, shall be inspected under the provisions of this chapter. Such other provisions of law for the better security of life as may be applicable to such vessels shall, by the regulations of the board of supervising inspectors, also be required to be complied with before a certificate of inspection shall be granted, and no such vessel shall be navigated without a licensed engineer and a licensed pilot: Provided, however, That in open steam launches of ten gross tons and under, one person if duly qualified, may serve in the double capacity of pilot and engineer. All vessels of above fifteen gross tons carrying freight or passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha, or electric motors, shall be subject to all the provisions of this section relating to the inspection of hulls and boilers and requiring engineers and pilots, and for any violation of the provisions of this or the following chapter or sections 214 or 215 applicable to such vessels, or of rules or regulations lawfully established thereunder, and to the extent to which such provisions of law and regulations are so applicable, the said

vessels, their masters, officers, and owners shall be subject to the provisions of sections 494 to 498, inclusive, relating to the imposition and enforcement of penalties and the enforcement of law. All vessels of fifteen gross tons or less propelled in whole or in part by gas, gasoline, petroleum, naphtha, fluid, or electricity, and carrying passengers for hire, shall carry one life preserver, of the sort prescribed by the regulations of the board of supervising inspectors, for every passenger carried, and no such boat while so carrying passengers shall be operated or navigated except in charge of a person duly licensed for such service by the local board of inspectors. No examination shall be required as a condition of the obtaining of such a license, and any such license shall be revoked or suspended by the local board of inspectors for misconduct, gross negligence, recklessness in navigation, intemperance, or violation of law on the part of the holder, and if revoked, the person holding such license shall be incapable of obtaining another such license for one year from the date of revocation. (R. S. Sec. 4426; Dec. 22, 1890, c. 26, 26 Stat. 692; Mar. 3, 1905, c. 1457, Sec. 4, 33 Stat. 1029; May 16, 1906, c. 2460, 34 Stat. 193.)

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SEC. 405. *Tugboats and Freight Boats.*—The hull and boiler of every tugboat, towing boat, and freight boat shall be inspected, under the provisions of this chapter; and the inspectors shall see that the boilers, machinery, and appurtenances of such vessel are not dangerous in form of workmanship, and that the safety valves, gauge cocks, low-water alarm indicators, steam gauges, and fusible plugs are all attached in conformity to law; and the officers navigating such vessels shall be licensed in conformity with the provisions of chapter 11 and shall be subject to the same provisions of law, as officers navigating passenger steamers. (R. S. Sec. 4427.)

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SEC. 511. *"Motor Boats" Defined; Inspection.*—The words "motorboat" where used in this chapter shall include every vessel propelled by machinery and not more than sixty-five feet in length except tugboats and towboats propelled by steam. The length shall be measured from end to end over the deck, excluding sheer: *Provided,* That the engine, boiler, or other operating ma-

chinery shall be subject to inspection by the local inspectors of steam vessels, and to their approval of the design thereof, on all said motor boats, which are more than forty feet in length, and which are propelled by machinery driven by steam. (June 9, 1910, c. 268, Sec. 1, 36 Stat. 462.)

SEC. 515, Rem. Rev. Stat. *Life preservers; licenses.*—Every motor boat subject to any of the provisions of this chapter, and also all vessels propelled by machinery other than by steam more than sixty-five feet in length, shall carry either life preservers or life belts, or buoyant cushions, or ring buoys or other device, to be prescribed by the Secretary of Commerce, sufficient to sustain afloat every person on board and so placed as to be readily accessible. All motor boats carrying passengers for hire shall carry one life preserver of the sort prescribed by the regulations of the Board of Supervising Inspectors for every passenger carried, and no such boat while so carrying passengers for hire shall be operated or navigated except in charge of a person duly licensed for such service by the local board of inspectors. No examination shall be required as the condition of obtaining such a license, and any such license shall be revoked or suspended by the local board of inspectors for misconduct, gross negligence, recklessness in navigation, intemperance, or violation of law on the part of the holder, and if revoked the person holding such license shall be incapable of obtaining another such license for one year from the date of revocation: Provided, That motor boats shall not be required to carry licensed officers, except as required in this chapter. (June 9, 1910, c. 268, Sec. 5, 36 Stat. 463; Mar. 4 1913, c. 141, 37 Stat. 736.)

Title LII.—Regulation of Steam-Vessels.—Ch. I.

SEC. 4427. R. S.—The hull and boiler of every tug-boat, towing-boat, and freight-boat shall be inspected, under the provisions of this Title; and the inspectors shall see that the boilers, machinery, and appurtenances of such vessel are not dangerous in form or workmanship, and that the safety-valves, gauge-cocks, low-water alarm-indicators, steam-gauges, and fusible plugs are all attached in conformity to law; and the officers navigating such vessels shall be licensed in conformity with the

provisions of this Title, and shall be subject to the same provisions of law as officers navigating passenger-steamers.

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SEC. 4438. The boards of local inspectors shall license and classify the masters, chief mates, engineers, and pilots of all steam-vessels. It shall be unlawful to employ any person, or for any person to serve as a master, chief mate, engineer, or pilot on any steamer, who is not licensed by the inspectors; and any one violating this section shall be liable to a penalty of one hundred dollars for each offense.

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U. S. C. A., Title 28.

SEC. 344. *(Judicial Code, Section 237, Amended.) Appellate Jurisdiction of Decrees of State Courts; Certiorari.*— * * *

(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

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